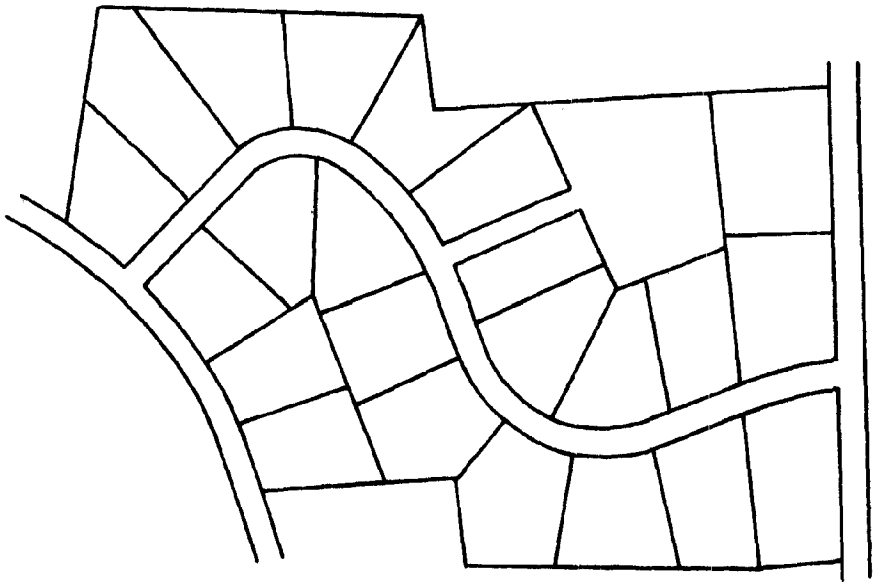
# SUBDIVISION REVIEW :



## a procedural guide for local planning boards



COT VALLEY REGIONAL PLANNING COMMISSION

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# SUBDIVISION REVIEW

A Procedural Guide for Local Planning Boards



Penobscot Valley
Regional Planning Commission
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# I. INTRODUCTION

## A. REASONS FOR SUBDIVISION CONTROL

The control of subdivisions serves two general purposes. The first is the immediate protection of the homeowner and of the municipality. The municipality is better assured that a proposed development will be built according to accepted standards and that the public health and safety will be protected. The homeowner is better assured that the home he buys in a development will be properly provided with municipal services, that he will not be confronted with additional assessments for street improvements; or that his individual sewage disposal facilities, which are usually underground by the time he sees the house, are adequate and meet the requirements of all existing codes and regulations.

The second purpose of subdivision control is to guide the municipality's development: to further the efficient and economical operation of important public services and to provide for controlled and orderly growth of the community. Although subdivision regulations cannot necessarily control where development will take place, they go a long way in determining the quality of that development. This vital function of subdivision control gives a community a head start in its attempt to preserve or change its character, as it sees fit.

## B. THE SUBDIVISION REVIEW PARTICIPANTS

The two principal figures in the subdivision review process are the local Planning Board and the subdivider/ developer.

The Planning Board should make a point to know the nature of each developer who proposes a subdivision plan. An evaluation of past performance, if any, might be very helpful and enlightening. This may be accomplished by visiting the site of previous developments in your town or other towns. It would be advantageous to beware of the developer who intends only to exploit the community's land resources without regard for the public welfare. On the other hand, the laying aside of the traditional distrust of the developer in the case of a person who will develop the land while respecting the wishes of the community as a whole would be equally advantageous. In any case, without cooperation and communication between the Planning Board and the developer, the results of a subdivision plan can be disasterous, not only for the parties involved, but also for the community.

The role of the public in the review process is also very important. Large subdivisions will ultimately affect not only the surrounding neighborhood, but the entire community in one way or another. Therefore, the public should be given the opportunity to become involved in the initial stages of the review in the form of a public hearing. Planning Boards and developers have both benefitted from suggestions made by interested citizens at these public hearings.

Although the State Subdivision Law does not specifically spell out when a public hearing should be held, we strongly suggest that the public be kept informed, whether through a public hearing or other means such as newspaper articles, of any important subdivision proposals. Indeed, many local subdivision regulations require a public hearing on all subdivision proposals.

## C. THE NEED FOR REVIEW

M.R.S.A. Title 30, Section 4956 - better known as the State Subdivision Law - states that "all requests for subdivision approval shall be reviewed by the municipal Planning Board, agency or office, or if none, by the municipal officers...."

This simply means that if a town has established a Planning Board, it is required by law to review all subdivision proposals within its jurisdiction. If a Planning

Board does not exist, this same responsibility rests with the municipal officers (the Board of Selectmen or Council).

Responsibility for subdivision review is generally recognized and accepted, however, many members of the boards are uncertain as to exactly what they can or should do in exercising their authority.

## D. THE GUIDE

The purpose of this guide is to help the local Planning Board apply the criteria listed in the State Subdivision Law to individual subdivision proposals which they must review.

While we cannot make subdivision review an exact science, we can attempt to clarify and explain each of the eleven criteria for review in the law, thus giving local Planning Boards a yardstick with which to measure the virtues or drawbacks of each subdivision. The guide can also be used to assure that the requirements of the State Subdivision Law are satisfied.

## E. BURDEN OF PROOF

Possibly the single most important thing for the local Planning Board to bear in mind in the subdivision review process is that the "burden of proof" rests with the subdivider. The State Subdivision Law makes this quite clear when it states, "In all instances the burden of proof shall be upon the persons proposing the subdivisions". In other words, the subdivider must prove to the local Planning Board that he has met the conditions set forth by the State Subdivision Law before the proposal can be approved.

This reversal of traditional responsibility gives the Planning Board much more control over developments that heretofore were allowed simply because a municipality could not prove conclusively that the community or the environment would be adversely affected by such developments. Now, any question that remains as to whether or not the proposed subdivision has met all criteria in the State Subdivision Law is sufficient grounds for denial of the application.

The local Planning Board is in the driver's seat.....

## II. WHAT IS A SUBDIVISION?

The following discussion was prepared by the Southern MidCoast Regional Planning Commission.....

### WHAT IS A SUBDIVISION?

Maine's subdivision law (Title 30 M.R.S.A. § 4956 defines a subdivision as "the division of a tract or parcel of land into 3 or more lots within any 5 year period, which period begins after September 22, 1971, whether accomplished by sale, lease, development, buildings or otherwise". There are seven situations in which a lot is not considered to be part of a subdivision (under Maine law):

1. Inheritance
2. Condemnation
3. Order of a Court
4. Gift to a person related to the donor by blood, marriage, or adoption, unless the intent of such gift is to avoid the objectives of the Subdivision Law.
5. Transfer of an interest in land to an abutting landowner, however accomplished.
6. Land retained by the subdivider for his own use as a single family residence for a period of at least 5 years prior to the second dividing of a parcel.
7. Lots of 40 or more acres.

A subdivision does not necessarily imply a development of residential units on separate lots. The law is very inclusive and any division of land for any purpose (other than those specifically excepted) is covered by the law. Questions arise when the division of land is housed under one roof (such as an apartment building or shopping center) or when the lots aren't being used in a conventional manner (planned unit developments with land in joint ownership or campgrounds). The following excerpt is taken from The Subdivision Process: History and Law, written by attorney Daniel Kane and published in 1974 by the Hancock County Regional Planning Commission

2. A subdivision is a Division or Delineation of Real Estate into Portions for Separate Use and Occupancy

"A subdivision is the division of a tract or parcel of land into 3 or more lots within any 5 year period, whether accomplished by sale, lease, development, building or otherwise..." 30 M.R.S.A. § 4956 (1). The statute provides that certain "lots" are not counted in determining the existence of a subdivision, i.e., an interest in land transferred to an abutting land owner, land retained by the

subdivider for his own single family residence for at least 5 years, and lots of 40 acres or more in size. Furthermore, divisions of land by inheritance, court order, or gift to a relative are excepted.

In an advisory Inter-Departmental Memorandum of the Attorney General's Department and the Maine Municipal Association dated June 15, 1972, the Attorney General provided an advisory opinion on the kinds of land division comprehended by the statutory definition of "subdivision". The starting point for analysis was the meaning of the notion of "division" of land into "lots" about which the informal opinion concluded:

> As we have noted above, the critical question is to determine whether in each case there has been a "division" of land into "lots". The term "lot" may be defined in two ways: either (1) according to its legal characteristics (e.g., a parcel of land identified as a plat or set out by metes and bounds), or (2) according to its character and function (e.g., a piece of land measured and set apart for private use and occupancy). See Words and Phrases and Black's Law Dictionary for further examples of "lot". Of the two definitions, the latter is the more helpful since it describes a more functional approach; that is, it is concerned not with legal form but rather with actual use. It is this functional approach which we have chosen to utilize in interpreting "subdivision", since we believe it is consistent with the meaning of the law.

The analysis leads to a comprehensive perspective of the kinds of developments subsumed within the notion of "subdivision" and therefore subject to the close scrutiny of subdivision review:

> It is also conceivable that developments other than residential ones may be "subdivision". Though the conclusion in any case depends on the particular facts, it is our opinion that cluster housing, shopping centers, mobile home parks, and apartment, condominium or cooperative housing with multiple building units may be deemed "subdivisions". The test again is the actual substance and not the legal form of the "development".
> June 15, 1972 Advisory Memorandum, Supra.

It is difficult to understand why the Advisory Memorandum qualifies or limits the inclusion of apartments, condominium units, and cooperative housing units only to those "with multiple building units". Real estate has both a vertical and horizontal dimension, the owner's rights by law extending upward at least as far as the space is practically useable, and there is no denying that "real" space is divisible either horizontally or vertically. A single apartment, condominium or cooperative building will at least have vertical divisions or delineations of the land or real estate into portions for separate use and

occupancy and frequently both horizontal and vertical. It therefore is encompassed within the Attorney General's own legal rendering of the "division" of land into "lots". The better conclusion appears to be that apartments, condominiums, and cooperative dwellings of any kind are subdivisions. The corresponding subdivision plan or plat to be sufficient, would have to show the proposed vertical and horizontal division, i.e., the building plans themselves.

Another question in need of resolution is whether or not a transient campground is a subdivision. Under the foregoing analysis clearly it is. A campground entails a horizontal delineation of "lots" or divided spaces for separate use and occupancy. Merely because the improvements are more modest is it any less a subdivision? Nor is the town any less concerned about the impact of a campground on the environment and community services. A study of subdivision activity on the lower Penobscot River by H.B. Metzger and F.M. French, entitled "Land Subdivision Activity in the Lower Penobscot River Area", and dated 1973 did treat campgrounds as subdivisions. Yet at least one town in the county reviews campground proposals only as may be required under the applicable Zoning Laws. Yet campgrounds can have great environmental, social and economic impacts upon a community, of the kind subdivision laws were intended to subject to the searching review of the Planning Board.

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The conclusion that can be drawn from the above article is that most, if not all, proposals for multiple use of a piece of land would be covered by Maine's subdivision law and should be locally reviewed. This would include apartments, condominiums, shopping centers, hotels, campgrounds, industrial parks and planned unit developments.

A Planning Board, in writing its own regulations or ordinance, would be wise to explicitly state the types of developments that would be considered as subdivisions.

The sketches contained in Appendix 2, which were prepared by the State Planning Office, may also be of assistance to local Planning Boards in determining whether a proposed division of land actually constitutes a subdivision under the State Law.

Further discussion may also be found in the legal opinions which constitute Appendix 3.

## III. ADMINISTRATION OF THE REVIEW PROCESS

The Law is very specific about the administration of subdivision reviews. It would benefit everyone involved if the board would take the time to review the Law each time a subdivision proposal is received.

Probably most important and most misunderstood is the timing of the review. Outlined below are the time constraints:

1. The developer submits an application for which the Planning Board issues him a dated receipt.

2. The Planning Board has 30 days to decide whether or not the application is complete and, if not, to notify the developer as to exactly what additional information must be submitted.

3. Other than notifying the developer of the need for additional information, the Planning Board is not required to do anything until it receives a complete application.

4. Upon receipt of a complete application, the Planning Board has sixty days in which to reach a decision.

5. If the Planning Board decides a public hearing is necessary, it must hold the hearing within 30 days of the date the completed application was received. Notice of the hearing must be properly posted at least 7 days in advance of the hearing.

6. If a public hearing is held, the Planning Board has 30 days from the date of that hearing to reach its decision.

In addition to following this timetable closely, the Planning Board must keep accurate records of its meetings and actions: what it did, why and when. The State Planning Office has developed some sample forms for this purpose which are included as Appendix 4 of this guide. The Planning Board should be careful to keep a copy of all correspondence that it sends and receives from the applicant.

It is highly recommended that the Planning Board take time to visit the actual site of a proposed subdivision.

This will enable the members to gain a clearer picture of what the subdivision will probably look like when completed. It will also help the members to relate all the technical information they receive from the subdivider to the reality of the actual land.

## IV: APPLYING STATE GUIDELINES FOR SUBDIVISION REVIEW

Once the Planning Board has received a completed application, it must apply the State guidelines (which are mandatory criteria) to the subdivision proposal. While these guidelines are somewhat vague in that they contain many words such as "undue", "sufficient", "unreasonable" etc, it should be understood that the legislature was providing guidance to Planning Boards throughout the State and tried to give them as much latitude as possible in their decision making. Also, since no two subdivision proposals are alike, any attempt to provide precise statewide standards to fit every set of circumstances would be quite impossible.

Remembering that the State guidelines are mandatory criteria, that all subdivision proposals must be reviewed and approved locally and that the burden of proof always rests with the developer, we will now examine each of the review criteria in the State Subdivision Law and suggest ways in which the local Planning Board can use it to evaluate a proposed subdivision.

## GUIDELINE "A"

"WILL NOT RESULT IN UNDUE WATER OR AIR POLLUTION. IN MAKING THIS DETERMINATION IT (the Planning Board) SHALL AT LEAST CONSIDER: THE ELEVATION OF THE LAND ABOVE SEA LEVEL AND ITS RELATION TO THE FLOOD PLAINS, THE NATURE OF SOILS AND SUB-SOILS AND THEIR ABILITY TO ADEQUATELY SUPPORT WASTE DISPOSAL, THE SLOPE OF THE LAND AND ITS AFFECT ON EFFLUENTS, THE AVAIL-ABILITY OF STREAMS FOR DISPOSAL OF EFFLUENTS, AND THE APPLI-CABLE STATE AND LOCAL HEALTH AND WATER RESOURCES REGULATIONS"

The subdivider should indicate elevation and slope on the plat plan (see Appendix 5 for a discussion of the plat plan). Most model subdivision regulations call for a scale of not less than 500' = 1" with contour lines at intervals of not more than five feet. The scale should be determined with your County's Registry of Deeds requirements in mind, since the final plat will have to be registered with them.

Flood plains or wetlands, if any, should be indicated on the plat plan. The source of information used in making this determination (i.e. soils maps, federal flood insurance maps, etc.) should be noted. If <u>any</u> flood plains or wetlands are present, whether or not construction is planned on or near them, the Planning Board should be especially cautious. The proposed plan should be reviewed by the local Soil and Water Conservation District or a qualified soils scientist to determine actual lot-by-lot flood hazard potential and the suitability of the lots for building sites.

If any portion of a proposed subdivision is in an area designated by the federal government as a flood hazard area, that portion, if developed, must meet special requirements for construction as set forth in the town's flood hazard ordinance (if the town has enrolled in the Federal Flood Insurance program).

Soils and subsoils ability to support waste disposal will be discussed further in guidelines "D" and "F".

Since there is little or no expertise on the subject of air pollution, any proposed development other than residential that would appear to have an affect of the quality of the air in any manner, should be referred to the Department of Environmental Protection, Bureau of Air Quality Control for review and comment.

## GUIDELINE "B"

"HAS SUFFICIENT WATER AVAILABLE FOR THE REASONABLY FORESEEABLE NEEDS OF THE SUBDIVISION"

If a PUBLIC WATER SUPPLY is proposed, the plan should be reviewed by the Water District superintendent or municipal engineer, as applicable. If he finds that the proposed subdivision would result in an undue burden on the water source, the disbribution system or treatment facilities, the reviewing official should provide assurances that systems can be modified or expanded to meet needs. If expansion or modification is necessary, an agreement should be reached beforehand regarding the expense of this work. The plan may also be reviewed by the local fire chief to assess placement, pressure and adequacy of fire hydrants and water storage facilities, where indicated.

If a CENTRAL WATER SUPPLY is proposed (i.e. one well or water source serving a number of residences) the plan should be reviewed and approved in writing by the Maine Department of Human Services, both to insure water quality and plumbing installations.

If an INDIVIDUAL WATER SUPPLY is proposed the plan should be reviewed and approved in writing by a civil engineer registered in the State of Maine who should determine by actual test, or other reliable means that sufficient water of acceptable quality is available.

Because they are difficult to maintain in a sanitary condition, dug wells should be permitted only if it is not economically or technically feasible to develop other ground water sources.

The Planning Board may also require the subdivider to submit the results of water quality tests as performed by the State Department of Human Services, Bureau of Health. All water supply systems must be designed and installed in accordance with the provisions of the Maine State Plumbing Code.

The Planning Board may also request that a letter from an established well-drilling company commenting on the feasibility of individually drilled wells be submitted by the subdivider.

## GUIDELINE "C"

"WILL NOT CAUSE AN UNREASONABLE BURDEN ON AN EXISTING WATER SUPPLY, IF ONE IS TO BE UTILIZED"

The plan should be reviewed and approved in writing by the water district superintendent or the municipal engineer, as applicable, to insure that the proposed subdivision would not unduly burden the water source, distribution system or treatment facilities, if available. Section on PUBLIC WATER SUPPLY contained in Guideline "B" would apply here also.

Where it is feasible to extend an existing public water system to serve a subdivision, the installation of the extended system should conform to the specifications of the existing system.

NOTE: Some subdivision guidelines indicate that the subdivider should bear the expense of installation of roads, water and sewer mains, hydrants and other improvements. In any case, an agreement should be made between the town and the subdivider in the early stages of the review to preclude any possible misunderstandings of financial responsibility on either side.

## GUIDELINE "D"

"WILL NOT CAUSE UNREASONABLE SOIL EROSION OR REDUCTION IN THE CAPACITY OF THE LAND TO HOLD WATER SO THAT A DANGEROUS OR UNHEALTHY CONDITION MAY RESULT"

The subdivider should submit a soils report consisting of a map indicating the following information:

1. soils boundaries
2. soil type identification
3. location of soil test areas
4. erodibility factors (watercourses, steep slopes etc.)

The soils map should be such that it can be easily superimposed on that plat plan to indicate soils type by lot.

Where marginal or poor soils for septic sewage diposal are indicated, or where mapping accuracy may be questioned, a lot-by-lot soils suitablilty determination should be made.

If the local Planning Board is not well versed in soils suitability interpretation, the plan should first be reviewed by the local Soil and Water Conservation District. If they recommend, it may be advisable to require the subdivider to submit a soil erosion and sediment control plan certified by the Maine Soil and Water Conservation Commission.

The subdivider should submit a surface drainage plan showing ditching, culverts and drainage easements. This plan should be reviewed and approved by the municipal engineer, certified civil engineer or the local Soil and Water Conservation District. In some cases a sketch map of the entire watershed area may be necessary to get a true picture of conditions which may arise within the smaller area of the subdivision.

Since topsoil holds water and retards soil erosion, it should not be removed except where absolutely necessary for roads, parking areas and building excavations.

Existing vegetation should be left intact where possible to prevent possible soil erosion.

In fragile areas such as steep slopes (usually defined as 25% or more), wetlands and shoreland areas, the local Planning Board can require a developer to take steps necessary to correct or prevent soil erosion. The local Soil and Water Conservation District can outline the necessary steps.

Where it is necessary to regrade an area because of construction operations, the area should be regraded and stabilized as soon as possible. The Planning Board should set a time limit for this since erosion can take place rapidly on such exposed areas.

Slopes should be seeded and mulched if necessary to assure growth before erosion begins. The Cooperative Extension Service can offer expertise on landscaping and planting.

## GUIDELINE "E"

### "WILL NOT CAUSE UNREASONABLE HIGHWAY OR PUBLIC ROAD CONGESTION OR UNSAFE CONDITIONS WITH RESPECT TO USE OF THE HIGHWAYS OR PUBLIC ROADS EXISTING OR PROPOSED"

The size, design and layout of streets in a subdivision is probably the single most important and lasting aspect of a subdivision. In our automobile dependent society, houses may come and go, but once a street is laid out and paved, it is usually there more or less permanently. Therefore, careful consideration should be given to any proposal involving street construction.

Some of the more important considerations are:

a. Schools - The proximity of a proposed subdivision to neighborhood schools will have an affect on future traffic patterns. If within walking distance, sidewalks should be required for the safe passage of children. If bussing is indicated, roads should be large enough to safely accommodate school busses. Adequate turn-around space must be provided on deadend streets.

b. Municipal services - Snow plowing in the winter should also be considered. Adequate turn-around space must also be provided for snow plows.

Some other considerations are fire equipment access, access to other streets, parking, access to adjacent undeveloped land, visibility of access from approaches, and anticipated additional traffic to be generated by the proposed subdivision.

Where intersections with any numbered State Highway are proposed, the Maine State Department of Transportation should be consulted.

The local Planning Board should require an outline of the proposed subdivision with its street system. If the proposed subdivision covers only a portion of the subdivider's entire holding, an indication of the future probable street system for the remaining tract of land should be requested.

NOTE: Many communities include road construction standards and specifications as part of a locally adopted subdivision regulation. Others have adopted a separate road ordinance

or have standards for road construction in their Comprehensive Plan. In any case, subdivision road design should follow certain minimum standards which include:

a. Right-of-way and pavement width.

b. Maximum and minimum gradient.

c. Construction methods and materials.

d. Minimum rate of curvature, sight distance, etc.

e. Block dimensions and cul-de-sac requirements.

Standards for road construction are available at the Maine State Department of Transportation.

Traffic generation estimates are available at the Penobscot Valley Regional Planning Commission office.

## GUIDELINE "F"

## "WILL PROVIDE FOR ADEQUATE SEWAGE WASTE DISPOSAL"

Since Guideline "G" deals with municipal sewage disposal systems, it can be assumed that this section is meant to cover private, on-lot systems.

Subsurface septic sewage disposal may be the single most important factor affecting the quality of a subdivision, and the short term health, safety and general welfare of its inhabitants. Individuals who purchase lots in a subdivision usually tend to take for granted that they can build on them without taking any extraordinary measures. Since in the long run, the town will have to deal with those who buy the lots rather than those who sell them, it is in the best interest of the town that it act, at least in part, in the role of a consumer protection agency when considering this aspect of a subdivision proposal.

Local Planning Boards should use the soils information available to them to assure that on-lot septic sewage disposal is feasible. Since all on-lot systems are regulated by the State Plumbing Code, the subdivider should be asked to obtain a letter from the State Department of Human Services or the local plumbing inspector indicating the feasibility of on-lot disposal and the adequacy of the proposed lot size given the soil types on each lot. A septic tank soils test for <u>each</u> lot is advisable.

If the soil type shown on existing surveys are questionable, as they probably are for all small lots, it may be necessary for the subdivider to engage a soils scientist to do on-site investigations.

Developers who do not wish to submit the necessary soils information because they are selling wood lots should be required to indicate on the plat plan to be filed with the County Registry of Deeds that the lots may be unsuitable for building and on-lot sewage waste disposal.

Slope can be a critical factor in both sewage disposal and water pollution (see Guideline "A"). If the Planning Board has any doubts about this possibility, it should require that the developer have the local plumbing inspector, a certified engineer, soils scientist or other qualified individual address the affect of slopes on particular lots specifically.

## GUIDELINE "G"

"WILL NOT CAUSE AN UNREASONABLE BURDEN ON THE ABILITY OF A MUNICIPALITY TO DISPOSE OF SOLID WASTE AND SEWAGE IF MUNICIPAL SERVICES ARE TO BE UTILIZED"

Where an existing public sewer line is located within 1500 feet of a proposed subdivision at its nearest point, provisions should be made to connect with it, if the town so desires. Where tie-in with an existing municipal sewer system is proposed, the subdivision plan should be reviewed and approved in writing by the municipal engineer or sanitary district superintendent, as applicable, to insure that:

a. The proposed system is compatible with the existing system and is of adequate size to handle all proposed and projected use.

b. The existing sewer system can adequately handle the estimated sewage generation of the proposed subdivision.

c. Where sewage is treated, will not overburden treatment facilities.

NOTE: Here again, financial responsibility for installation of sewer extensions or modifications must be determined early on in the review process.

Many different types of municipal solid waste disposal systems exist at present. They range from small open-burning dumps to incinerators and compactors and regional land fills. The municipal engineer or other person with similar responsibility for municipal solid waste disposal should review the proposed subdivision plan, if sufficiently large, to determine whether the estimated waste generation can adequately be handled by the municipality.

## GUIDELINE "H"

"WILL NOT PLACE AN UNREASONABLE BURDEN ON THE ABILITY OF THE LOCAL GOVERNMENT TO PROVIDE MUNICIPAL SERVICES"

This section was repealed by the Legislature in 1973. It was felt that the ability of a local government to provide municipal services was not sufficient grounds for a Planning Board to deny a subdivision proposal. We include this repealed Guideline for alphabetical continuity only since, if you will read the present Subdivision Law, the letter "H" is excluded.

## GUIDELINE "I"

"WILL NOT HAVE AN UNDUE ADVERSE AFFECT ON THE SCENIC OR NATURAL BEAUTY OF THE AREA, AESTHETICS, HISTORIC SITES OR RARE AND IRREPLACEABLE NATURAL AREAS"

Some subdivision regulations require the dedication of a certain part of the land within the proposed subdivision for open space and/or recreational purposes. In other cases, a subdivider may be required to make a monetary donation toward a recreation area in lieu of land dedication.

It is essential that provisions for adequate open space be made, especially in larger developments. The size and location of open space and recreation areas should be negotiated between the Planning Board and the subdivider. These areas should be easily accessible from all lots within the subdivision.

NOTE: Open space requirements and formulas for determining size of open spaces relative to the size of the proposed subdivision are available at the Penobscot Valley Regional Planning Commission office.

The plat plan should indicate the location of all natural features and site elements to be preserved, if any. Since these areas are not clearly defined and everyone has his or her own opinion on just what is a "natural area" worth preserving, the input of the local citizens of the town is valuable in determining the designation of such areas. This might be accomplished at a public hearing on the proposed subdivision.

The Planning Board may require that a proposed subdivision design include a landscape plan that will indicate the preservation of exisitng trees (usually 10 inches or more in diameter) and the preservation of scenic, historic or environmentally desirable areas.

Normal shrubbery should be preserved as far as practicable and where removed, should be replaced with other vegetation that is an equally effective in retarding run-off, preventing erosion and preserving natural beauty.

The importance of natural buffering should be emphasized. Although usually related to the separation of different types of land uses such as residential/commercial,

buffer strips or areas are useful within residential subdivisions. Most homeowners go to great lengths and expense to isolate their properties with shrubbery and fences. Why destroy what the natural landscape provides?

If your town has a Conservation Commission, it can be extremely helpful in identifying natural and scenic areas that should be preserved. Their advice should be sought freely.

## GUIDELINE "J"

"IS IN CONFORMANCE WITH A DULY ADOPTED SUBDIVISION REGULATION OR ORDINANCE, COMPREHENSIVE PLAN, DEVELOPMENT PLAN, OR LAND USE PLAN, IF ANY"

This Guideline must be used with some discretion. It is doubtful that the existence of a Comprehensive Plan by itself is sufficient basis to deny a subdivision application that conforms to all the other requirements of the subdivision law. On the other hand, this particular guideline requires that the Planning Board look at the community's plans and related ordinances in its review process, and consider them in its evaluation of the subdivision application. Developers may well be able and willing to design their subdivision in such a manner as to minimize conflict with local plans.

If the proposed subdivision site is in a developed area, the Planning Board must be mindful of "fitting" the subdivision to its surrounding, existing conditions. In the case of an undeveloped area, the Planning Board must be aware that the initial subdivision in an area may well establish the pattern for the future development of that area.

To assure that the initial subdivision in an area does not adversely affect the entire area, the Planning Board should make sure that the development is in keeping with the goals of the community's Comprehensive Plan.

If a Planning Board has adopted subdivision regulations, it is the responsibility of the board to see that the provisions of those regulations are complied with by the subdivider.

## GUIDELINE "K"

"THE SUBDIVIDER HAS ADEQUATE FINANCIAL AND TECHNICAL CAPACITY TO MEET THE ABOVE STATED STANDARDS"

If the developer proposes building roads, extending sewer and water lines or any such construction, it is in the best interest of the town to insure that the proposed construction is completed as promised and according to specifications. Many instances have been recorded where a developer "goes bankrupt" shortly after the sale of the final lot and before construction has begun on roads, sewer and water lines, etc. leaving this unwanted burden on the town or the new property owners. In some cases, the developer has had no experience in building roads, etc.

It is recommended that when improvements are proposed, the Planning Board require the developer to post a performance bond in accordance with accepted practice. Your town attorney can advise you on bonding procedures. Most model subdivision regulations require that a subdivider be bonded whenever any improvements are proposed.

A check on the subdivider's past performance will give the Planning Board some insight as to his technical ability. If the subdivider has no past record, it is up to him to demonstrate to the Planning Board that he can complete the proposed construction as agreed.

A letter from the subdivider's bank indicating sufficient financial resources can also be requested by the Planning Board.

## GUIDELINE "L"

"WHENEVER SITUATED, IN WHOLE OR IN PART, WITHIN 250 FEET OF ANY POND, LAKE, RIVER OR TIDAL WATERS, WILL NOT ADVERSELY AFFECT THE QUALITY OF SUCH BODY OF WATER OR UNREASONABLY AFFECT THE SHORELINE OF SUCH BODY OF WATER"

All shoreland areas within 250 feet of any pond, lake, river or tidal waters are afforded special protection by the Mandatory Shoreland Zoning and Subdivision Control Act. By this time, each town has adopted a Shoreland Zoning Ordinance or has the responsibility to administer and enforce the State Imposition Ordinance. If any portion of the proposed subdivision fall within these shoreland areas, the subdivider should be made aware of the additional requirements of your Shoreland Zoning Ordinance. Caution should be exercised by the Planning Board to insure that the requirements of the Shoreland Zoning Ordinance and all other town and State ordinances and regulations are fulfilled. (See Guideline "J")

Other State laws that may have a bearing on the proposed subdivision in these areas are:

a. The Great Ponds Act (T.38 S422)

b. Alterations of Coastal Wetlands Act (T.38 S471-8)

c. Stream and River Alteration Act (T.12 S2206-12)

d. Mandatory Shoreland Zoning Act (T.12 S4956)

## V. WHO MIGHT HELP

This section of the Guide will indicate some of the agencies and individuals that may be able to assist the local Planning Board in reviewing complicated proposals or provide answers to technical questions that may arise during the course of a subdivision review. It should be understood, however, that direct responsibility remains with the Planning Board and that the various agencies may have difficulty responding within the time limitations of the review process (see Section III). Remember, however, that the burden of proof rests with the subdivider and therefore, he can be required to provide certification of technical information if such information is requested before a completed application is officially accepted for review.

### 1. WATER POLLUTION AND WASTE DISPOSAL (Guidelines A, F & G)

Maine Department of Environmental Protection
Bureau of Water Quality Control
George Gormley, Director
Augusta Mental Health Institute
Ray Building
Augusta, Maine 04330
Telephone: 289-2591

Maine Soil & Water Conservation Commission
Charles L. Boothby, Executive Director
127 Sewall Street
Augusta, Maine 04330
Telephone: 289-2666

Local Soil & Water Conservation District
Name _____
Address _____
Telephone: _____

Local Plumbing Inspector
Name _____
Address _____
Telephone _____

Local Sanitary District
Name _____
Address _____
Telephone: _____

2. AIR POLLUTION
(Guideline A)

Maine Department of Environmental Protection
Bureau of Air Quality Control
Frederick C. Pitman, Director
Augusta Mental Health Institute
Ray Building
Augusta, Maine 04330
Telephone: 289-2437

Maine Department of Environmental Protection
Bureau of Air Quality Control
Gerald Bernier
31 Central Street
Bangor, Maine 04401
Telephone: 947-6746

3. FLOOD HAZARD
(Guideline A)

U.S. Department of Housing and Urban Development
Edward Thomas, Flood Insurance Specialist
H.U.D. Boston Office
JFK Federal Building Room 405A
Boston, Mass. 02203
Telephone: (617) 223-2616

Maine Bureau of Civil Emergency Preparedness
Reddington R. Robbins III, State C.E.P. Engineer
State Office Building
Augusta, Maine 04330
Telephone: 1-800-452-8735 (Toll Free) or 662-6201

4. WATER QUALITY
(Guidelines B & C)

Maine Department of Conservation
Bureau of Geology
Robert G. Doyle, Director
Augusta Mental Health Institute
Ray Building
Augusta, Maine 04330
Telephone: 289-2801

Maine Department of Human Services
Drinking Water Control
Raymond Hammond, Sanitary Engineer
221 State Street
Augusta, Maine 04330
Telephone: 289-3826

Local Water District
Name _____
Address _____
Telephone: _____

5. SOIL EROSION
(Guideline D)

Maine Soil & Water Conservation Commission
(See #1)

Local Soil & Water Conservation District
(See #1)

Maine Department of Environmental Protection
Bureau of Land Quality Control
Henry E. Warren, Director
Augusta Mental Health Institute
Ray Building
Augusta, Maine 04330
Telephone: 289-2111

Local Cooperative Extension Service Agent
Name _____
Address _____
Telephone _____

6. HIGHWAY CONGESTION
(Guideline E)

Maine Department of Transportation
Bureau of Planning
Daniel J. Webster, Jr., Director
State Office Building
Augusta, Maine 04330
Telephone: 289-3131

Maine Department of Transportation
Field Division 3 (Bangor)
Ralph M. Dunbar, Division Engineer
219 Hogan Road
Bangor, Maine 04401
Telephone: 942-4866

Local Engineer or Road Commissioner
Name _____
Address _____
Telephone _____

7. SOLID WASTE
(Guideline G)

Maine Department of Environmental Protection
Division of Solid Waste Management
Ronald C. Howes, Chief
Augusta Mental Health Institute
Ray Building
Augusta, Maine 04330
Telephone 289-2111

Municipal Officers or Public Works Department
Name _____
Address _____
Telephone _____

8. SCENIC BEAUTY, NATURAL AREAS & HISTORIC SITES
(Guideline J)

Maine Department of Conservation
Bureau of Parks & Recreation
Herbert Hartman, Director
Augusta, Mental Health Institute
Ray Building
Augusta, Maine 04330
Telephone: 289-3821

Local Conservation Commission
Name _____
Address _____
Telephone _____

Local Historic Society
Name _____
Address _____
Telephone _____

Maine Historic Preservation Commission
Earle Shuttleworth, Director
31 Western Avenue
Augusta, Maine 04330
Telephone 289-2133

9. SHORELAND ZONING
(Guideline L)

Maine State Planning Office
Rich Rothe, Shoreland Zoning Coordinator
184 State Street
Augusta, Maine 04330
Telephone: 289-3261

10. GENERAL SUBDIVISION REVIEW AND REFERRALS

Penobscot Valley Regional Planning Commission
31 Central Street
Bangor, Maine 04401
Telephone: 947-0529

Penobscot Valley Regional Planning Commission
Piscataquis Area Office
Central Hall
Dover-Foxcroft, Maine 04426
Telephone: 564-8581

# APPENDIXES

# SUBDIVISION LAW

TITLE 30

§ 4956 Land subdivisions

1. DEFINED. A subdivision is the division of a tract or parcel of land into 3 or more lots within any 5-year period, which period begins after September 22, 1971, whether accomplished by sale, lease, development, buildings or otherwise, provided that a division accomplished by devise, condemnation, order of court, gift to a person related to the donor by blood, marriage or adoption, unless the intent of such gift is to avoid the objectives of this section, or by transfer of any interest in land to the owner of land abutting thereon, shall not be considered to create a lot or lots for the purposes of this section.

In determining whether a tract or parcel of land is divided into 3 or more lots, the first dividing of such tract or parcel, unless otherwise exempted herein, shall be considered to create the first 2 lots and the next dividing of either of said first 2 lots, by whomever accomplished, unless otherwise exempted herein shall be considered to create a 3rd lot, unless both such dividings are accomplished by a subdivider who shall have retained one of such lots for his own use as a single family residence for a period of at least 5 years prior to such 2nd dividing. Lots of 40 or more acres shall not be counted as lots.

For the purposes of this section, a tract or parcel of land is defined as all contiguous land in the same ownership, provided that lands located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof.

2. MUNICIPAL REVIEW AND REGULATION

A. Reviewing authority. All requests for subdivision approval shall be reviewed by the municipal planning board, agency or office, or if none, by the municipal officers, hereinafter called the municipal reviewing authority.

B. Regulations. The municipal reviewing authority may, after a public hearing, adopt additional reasonable regulations governing subdivisions which shall control until amended, repealed or replaced by regulations adopted by the municipal legislative body. The municipal reviewing authority shall give at least 7 days' notice of such hearing.

C. Record. On all matters concerning subdivision review, the municipal reviewing authority shall maintain a permanent record of all its meetings, proceedings and correspondence.

C-1. Upon receiving an application, the municipal reviewing authority shall issue to the applicant a dated receipt. Within 30 days from receipt of an application, the municipal reviewing authority shall notify the applicant in writing either that the application is a complete application or, if the application is incomplete, the specific additional material needed to make a complete application. After the municipal reviewing authority has determined that a complete application has been filed, it shall notify the applicant and begin its full evaluation of the proposed subdivision.

D. Hearing; order. In the event that the municipal reviewing authority determines to hold a public hearing on an application for subdivision approval, it shall hold such hearing within 30 days of receipt by it of a completed application, and shall cause notice of the date, time and place of such hearing to be given to the person making the application and to be published in a newspaper of general circulation in the municipality in which the subdivision is proposed to be located, at least 2 times, the date of the first publication to be at least 7 days prior to the hearing.

The municipal reviewing authority shall, within 30 days of a public hearing or within 60 days of receiving a completed application, if no hearing is held, or within such other time limit as may be otherwise mutually agreed to, issue an order denying or granting approval of the proposed subdivision or granting approval upon such terms and conditions as it may deem advisable to satisfy the criteria listed in subsection 3 and to satisfy any other regulations adopted by the reviewing authority, and to protect and preserve the public's health, safety and general welfare. In all instances the burden of proof shall be upon the persons proposing the subdivisions. In issuing its decision, the reviewing authority shall make findings of fact establishing that the proposed subdivision does or does not meet the foregoing criteria.

3. GUIDELINES. When promulating any subdivision regulations and when reviewing any subdivision for approval, the planning board, agency or office, or the municipal officers, shall consider the following criteria and before granting approval shall determine that the proposed subdivision:

A. Will not result in undue water or air pollution. In making this determination it shall at least consider:

The elevation of land above sea level and its relation to the flood plains, the nature of soils and subsoils and their ability to adequately support waste disposal; the slope of the land and its effect on effluents; the availability of streams for disposal of effluents; and the applicable state and local health and water resources regulations;

B. Has sufficient water available for the reasonably forseeable needs of the subdivision;

C. Will not cause an unreasonable burden on an existing water supply, if one is to be utilized;

D. Will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result;

E. Will not cause unreasonable highway or public road congestion or unsafe conditions with respect to use of the highways or public roads existing or proposed;

F. Will provide for adequate sewage waste disposal;

G. Will not cause an unreasonable burden on the ability of a municipality to dispose of solid waste and sewage if municipal services are to be utilized;

I. Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas;

J. Is in conformance with a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan, or land use plan, if any; and

K. The subdivider has adequate financial and technical capacity to meet the above stated standards.

L. Whenever situated in whole or in part, within 250 feet of any pond, lake, river or tidal waters, will not adversely affect the quality of such body of water or unreasonably affect the shoreline of such body of water.

4. ENFORCEMENT. No person, firm, corporation or other legal entity may sell, lease or convey for consideration, offer or agree to sell, lease, or convey for consideration any land in a subdivision which has not been approved by the municipal reviewing authority of the municipality where the subdivision is located and recorded in the proper registry of deeds. The term "permanent marker" includes but is not limited to the following: A granite monument, a concrete monument, an iron

pin or a drill hole in ledge. No subdivision plat or plan shall be recorded by any register of deeds which has not been approved as required. Approval for the purpose of recording shall appear in writing on the plat or plan. No public utility, water district, sanitary district or any utility company of any kind shall install services to any lot in a subdivision for which a plan has not been approved.

Any person, firm, corporation or other legal entity who sells, leases, or conveys for consideration, offers or agrees to sell, lease or convey for consideration any land in a subdivision which has not been approved as required by this section shall be punished by a fine of not more than $1,000 for each such sale, lease or conveyance for consideration, offering or agreement. The Attorney General, the municipality, the planning board of any municipality or the appropriate municipal officers may institute proceedings to enjoin the violations of this section and if a violation is found by the court, the municipality, municipal planning board or the appropriate municipal officers may be allowed attorney fees.

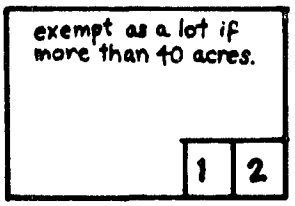
5. EXEMPTIONS. This section shall not apply to proposed subdivisions approved by the planning board or the municipal officials prior to September 23, 1971 in accordance with laws then in effect nor shall it apply to subdivisions as defined by this section in actual existence on September 23, 1971 that did not require approval under prior law or to a subdivision as defined by this section, a plan of which had been legally recorded in the proper registry of deeds prior to September 23, 1971. The division of a tract or parcel as defined by this section into 3 or more lots and upon all of which lots permanent dwelling structures legally existed prior to September 23, 1971 is not a subdivision.

The dividing of a tract or parcel of land and the lot or lots so made, which dividing or lots when made are not subject to this section, shall not become subject to this section by the subsequent dividing of said tract or parcel of land or any portion thereof, however, the municipal reviewing authority shall consider the existence of such previously created lot or lots in reviewing a proposed subdivision created by such subsequent dividing.

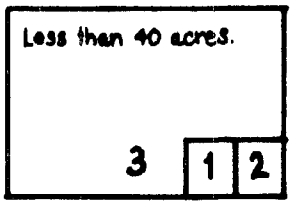
# APPENDIX 2

## WHEN LOCAL SUBDIVISION REVIEW IS REQUIRED

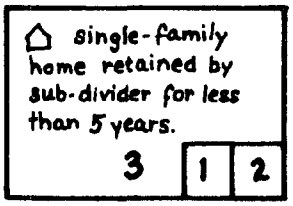
Assume that all subdivisions take place within a 5-year time span



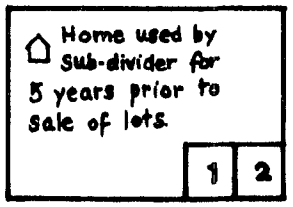

NO



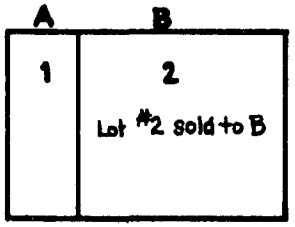

YES



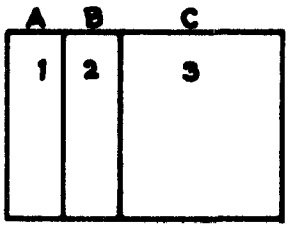

YES




NO

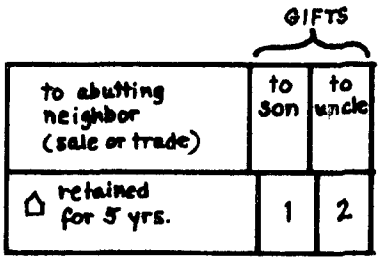



NO




B divides lot #2, creating lot #3. Lots 2 & 3 must be approved.

YES




NO

## WHEN LOCAL SUBDIVISION REVIEW IS REQUIRED

### Definition of Subdivision Under the Subdivision Law for the Purpose of Local Review

Definition: A subdivision is the division of a tract or parcel of land into 3 or more lots within any 5-year period, which period begins after September 22, 1971, whether accomplished by sale, lease, development, buildings or otherwise.

Exceptions: A lot created by:

1. Inheritance
2. Condemnation
3. Order of a court
4. Gift to a person related to the donor by blood, marriage, or adoptions, unless the intent of such gift is to avoid the objectives of the Subdivision Law.
5. Transfer of an interest in land to an abutting landowner, however accomplished.
6. Land retained by the subdivider for his own use as a single family residence for a period of at least 5 years prior to the second dividing of a parcel.
7. Lots of 40 or more acres.

# PROCEDURE FOR DETERMINING WHEN STATE B.E.P. REVIEW OF SUBDIVISIONS IS REQUIRED

**1.** Is the parcel of land being divided into 5 or more lots? — YES ☐ NO ☐

**2.** Are the lots being offered for sale or lease to the general public in any 5-year period? — YES ☐ NO ☐

**3.** Do the lots make up an aggregate land area of more than 20 acres? — YES ☐ NO ☐

If ALL are checked YES, proceed to question #4.

If ANY are checked NO, State Review is NOT required. No need to answer further questions.

---

ANSWER QUESTION #4 ONLY IF ALL OF THE ABOVE QUESTIONS WERE ANSWERED YES

**4.** Are ALL lots 10 acres or more in size? — YES ☐ NO ☐

If checked, State Review is not required. No need to answer further questions

If checked, proceed to questions 5, 6, 7, and 8.

---

ANSWER QUESTIONS #5, #6, #7 and #8 ONLY WHEN QUESTION #4 HAS BEEN ANSWERED NO.

**5.** All lots are 5 acres or more is size. — YES ☐ NO ☐

**6.** All lots of less than 10 acres are: of such dimensions as to accommodate within the boundaries of each a rectangle measuring 200 ft. by 300 ft. — YES ☐ NO ☐

**7.** For all lots of less than 10 acres:
a. The rectangle referred to in #6 above, abuts, at one point the principal access way, OR
b. The lots have 75 feet or more of frontage on a cul-de-sac which provides access. — YES ☐ NO ☐

**8.** The municipality has adopted additional regulations governing subdivisions pursuant to Title 30 MRSA Section 4956. — YES ☐ NO ☐

If ALL are checked YES, State Review is NOT required. Answer no further questions

If ANY are checked NO, State Review IS required.

If checked proceed to question 9

---

ANSWER QUESTION #9 ONLY WHEN QUESTION #8 HAS BEEN ANSWERED NO

**9.** Do all the lots make up an aggregate land area of 100 acres or more? — YES ☐ NO ☐

If checked, State Review is required.

If checked, State Review is not required.

When State Board of Environmental Protection Review is Required in addition to Local Review under the Subdivision Law

Definition of Subdivision under the Site Location Act, Title 38, M.R.S.A, Section 482 (5):

5. Subdivision. A "subdivision"is the division of a parcel of land into 5 or more lots to be offered for sale or lease to the general public during any 5-year period if such lots make up an aggregate land area of more than 20 acres except for the following:

   A. All the lots are at least 10 acres in size;

   B. All the lots are at least 5 acres, and the municipality has adopted additional regulations governing subdivisions pursuant to Title 30, section 4956, and the lots less than 10 acres are of such dimensions as to accomodate within the boundaries of each a rectangle measuring 200 feet and 300 feet, which abuts at one point the principal access way or the lots have at least 75 feet of frontage on a cul-de-sac which provides access; or

   C. All the lots are at least 5 acres, but do not make up a total of more than 100 acres and the lots less than 10 acres are of such dimensions as to accomodate within the boundaries of each a rectangle measuring 200 feet and 300 feet, which abuts at one point the principal access way or the lots have at least 75 feet of frontage on a cul-de-sac which provides access.

# APPENDIX 3

MEMORANDUM

August 4, 1976

TO: Regional Planning Commissions

FROM: Rich Rothe, State Planning Office RR

RE: Attorney General's Opinion Regarding Municipal Definition of Subdivision

---

The enclosed opinion from the Attorney General's Office indicates that municipalities may, by ordinance, but not by regulation adopted by the municipal reviewing authority, define a subdivision in ways more restrictive or all inclusive than it is defined by State Statute (Title 30, M.R.S.A., Section 4956). This opinion modifies a 1974 opinion which stated that such definition could be accomplished by ordinance or regulation adopted by the municipal reviewing authority.

RR/btg

# STATE OF MAINE

Inter-Departmental Memorandum Date July 21, 1976

To Rich Rothe Dept. State Planning

From Cabanne Howard, Assistant Dept. Attorney General

Subject Municipal Regulation of Subdivisions

SYLLABUS: Under its Home Rule powers, a municipality may by ordinance regulate a subdivision of land regardless of the provisions of the Municipal Subidivision Law, 30 M.R.S. §4956. A municipal planning board, however, (or municipal officers acting in place of a planning board) may not, when discharging their responsibilities under the Municipal Subdivision Law, alter, by regulation or otherwise, the statutory definition of a subdivision.

FACTS: On June 11, 1974, this office rendered an opinion at the request of you and Fourtin Powell answering various questions regarding the interpretation of the Municipal Subdivision Law, 30 M.R.S. §4956. One of those questions was whether a municipality may by ordinance or planning board regulation, define and therefore regulate a subdivision in a manner more restrictive than the statute. In the opinion we answered this question in the affirmative. Id at 2. On April 22, and April 27, 1976, however, we received letters from two lawyers in the state who deal frequently with questions of this type, Mr. David Plimpton of Portland and Mr. Atherton Fuller of Ellsworth, indicating that they have been taking a contrary position with their clients and asking whether we would reconsider our position. Because of the state-wide importance of the question, we have determined to do so.

The relevant portion of the 1974 opinion is as follows:

> "With regard to (1), 30 M.R.S.A. §4956 expressly authorizes the municipalities to 'adopt additional reasonable regulations governing subdivisions' in subsection 2B. This authorization is reiterated in 12 M.R.S.A. §4812-A. Since 30 M.R.S.A. §1917 grants municipalities the right to act unless prohibited from doing so by the State, the question is whether promulgation of a definition of subdivision by the State is a prohibition of the municipalities' right to adopt a more restrictive definition.

The State could have expressly denied the municipality the right to redefine subdivision. Instead it granted municipalities the unrestricted right to adopt additional regulations and ordinances. It is evident, therefore, the State was merely setting minimum standards, while leaving municipalities the freedom to adopt regulations consistent with the State law. Municipalities have in fact assumed that by passing a state minimum lot size law, the State did not preempt the right to define 'lots' more restrictly and have acted accordingly. Given the expressed authorization in 30 M.R.S.A. §4956, it is even more reasonable to assume municipalities are free to define subdivision more restrictively.

The definition may be made by regulation or ordinance. Anderson 19.20, Yokley 12.3 Villa-Laken Corp. v. Planning Board, 138 N.Y.S.2d 362 (1954). However, in view of the provision in subsection 2B a definition by ordinance would be more secure.

A warning should be added. Subsection 2B requires that additional regulations be 'reasonable'. It may, therefore, be unwise for a town to alter the 'reasonable provision in the State definition without having particular justification therefor. For example, the State law says no sale or lease of a lot 40 acres or larger shall be considered part of a subdivision. Unless a town was attempting to preserve an agricultural or natural area where 40 acre lots would not be sufficient to retain the character desired, it would seem of dubious validity for the town to attempt to impose a stricter definition than provided by this statute."

QUESTION: May a municipality by ordinance, or a municipal reviewing authority under the Subdivision Law by regulation, define a subdivision more restrictively than contemplated by the Subdivision Law?

ANSWER: A municipality may make such a definition by ordinance, but a municipal reviewing authority may not alter the statutory definition by regulation.

REASONING: The 1974 opinion that municipalities may regulate in a manner more restrictive than the statute was based on two grounds: (1) the existence, since 1969, of municipal "home rule" powers, MAINE CONSTITUTION, art. VIII, pt. 2, §1; 30 M.R.S. §1917, by which the municipalities may exercise any power inhering in government generally which is not prohibited to them, expressly or by clear implication, by the Legislature; and (2) the authority conferred by subsection 2(B) of the Subdivision Law which permits municipalities to adopt "additional reasonable regulations governing subdivisions."

In basing its result on the second of these two reasons, it appears the opinion was in error. In granting the authority to municipal reviewing authorities to adopt "regulations governing subdivisions" under the Subdivision Law, the Legislature clearly could not have been using the word "subdivision" in any sense other than the definition of that word explicitly provided in subsection 1 of the law. Thus, while a municipality might be able to adopt a regulation clarifying any ambiguity in the statutory definition of subdivision, it could not adopt a regulation defining a subdivision which is flatly contradictory to the statute. For example, a municipality might adopt a regulation defining with more precision the word "lease" in the statutory definition (so as to exclude, for example, motels - whose tenants might be thought to have one day "leases" - from the purview of the law), but a municipality cannot by regulation define a subdivision as consisting of only two lots, rather than the three required by the statute.

This is not to say, however, that a municipality cannot, through the exercize of its "home rule" powers, pass an ordinance regulating subdivisions in any way at all, so long as it does not violate the State or Federal Constitutions. To the extent the 1974 opinion rests on this basis, it is correct. A municipality could be prevented from so regulating only if it can be shown that the Legislature "expressly or by clear implication" has denied it the power to do so. Such a prohibition cannot be found in the Subdivision Law. That statute merely requires that the municipalities of the state regulate subdivisions to the degree set forth therein. Nowhere does it prohibit - or even imply - that they may not go further. In the absence of such a prohibition or implication, therefore, the municipalities must be judged to have the power (since 1969) to pass general subdivision regulatory ordinances defining subdivisions therein in any constitutional manner they choose.

MEMORANDUM

July 18, 1974

TO: All Regional Planning Commissions, Extension Agents

FROM: Fourtin Powell, Regional Planner
Rich Rothe, Shoreland Zoning Coordinator

SUBJECT: Attorney General's Informal Opinion on Municipal Subdivision Review Powers

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The attached opinion indicates that municipalities may continue to define "subdivision" in ways more restrictive or all inclusive than it is defined in the State Enabling Legislation (T. 30, § 4956). Such definition may be by regulation adopted by the municipal reviewing authority, usually the planning board, or, preferably, in a subdivision control ordinance adopted by the governing body of the municipality.

Under T. 30, § 4956, land transferred to an abutting owner is not considered a lot for the purpose of determining whether or not a subdivision has been created. Therefore, subdivision review of such transfers is not required since no "lots" have been created.

This situation can be reviewed if required by local regulation or ordinance. Some recommended amendments to the State law are included in the opinion.

# STATE OF MAINE

Inter-Departmental Memorandum Date June 11, 1974

To Rich Rothe, Fourtin Powell Dept. State Planning Office

From Edward Lee Rogers, Assistant Dept. Assistant Attorney General

Subject

In your letter of April 9, 1974, you ask the following questions:

(1.) Where State law defines subdivision for the purpose of required municipal review, can a municipality, by ordinance or by planning board regulation, define subdivision more stringently, or establish controls for the regulation of land divisions which are exempt from the law's definition of subdivision (i.e., define subdivision as two lots instead of three, and include the land retained by the subdivider)?

(2.) If the answer to #1 is negative, will the recently enacted changes in the Law apply only to ordinances and regulations adopted pursuant to its enactment, or will the new amendments nullify provisions in existing ordinances or planning board regulations?

(3.) The recent amendment of § 4956, sub-sect. 1, added a new sentence at the end to read as follows:

"For the purposes of this section, a lot shall not include a transfer of an interest in land to an abutting landowner, however accomplished."

Since this follows, rather than precedes, the provision dealing with 40 acre lots, does the clause, ". . . except where the intent of such sale or lease is to avoid the objectives of this statute.", apply to this new amendment? (If it does not, then the new subdivision law amendment exempting from review transfer of land to an abutting owner appears to create the possibility of unlimited subdivision without municipal review since such land is by definition a non-lot. In other words, if A sells 20,000 square foot separate parcels to abuttor B, can B then build on these parcels and sell them without review?)

In our opinion, the answer to question (1) is yes, and we therefore do not reach the second question. In our opinion, the answer to question (3) is no, the exception does not apply to the new amendment.

AN INFORMAL OPINION

With regard to (1), 30 M.R.S.A. § 4956 expressly authorizes the municipalities to "adopt additional reasonable regulations governing subdivisions" in subsection 2B. This authorization is reiterated in 12 M.R.S.A. § 4812-A. Since 30 M.R.S.A. § 1917 grants municipalities the right to act unless prohibited from doing so by the State, the question is whether promulgation of a definition of subdivision by the State is a prohibition of the municipalities' right to adopt a more restrictive definition.

The State could have expressly denied the municipality the right to redefine subdivision. Instead it granted municipalities the unrestricted right to adopt additional regulations and ordinances. It is evident, therefore, the State was merely setting minimum standards, while leaving municipalities the freedom to adopt regulations consistent with the State law. Municipalities have in fact assumed that by passing a state minimum lot size law, the State did not preempt the right to define "lots" more restrictely and have acted accordingly. Given the expressed authorization in 30 M.R.S.A. § 4956, it is even more reasonable to assume municipalities are free to define subdivision more restrictively.

The definition may be made by regulation or ordinance. Anderson 19.20, Yokley 12.3, Villa-Laken Corp. v. Planning Board, 138 N.Y.S.2d 362 (1954). However, in view of the provision in subsection 2B a definition by ordinance would be more secure.

A warning should be added. Subsection 2B requires that additional regulations be "reasonable." It may, therefore, be unwise for a town to alter the "reasonable" provision in the State definition without having particular justification therefor. For example, the State law says no sale or lease of a lot 40 acres of larger shall be considered part of a subdivision. Unless a town was attempting to preserve an agricultural or natural area where 40 acre lots would not be sufficient to retain the character desired, it would seem of dubious validity for the town to attempt to impose a stricter definition than provided by this statute.

Turning to question (3), the new amendment to subsection 1 cannot be qualified by a clause preceding it in a separate sentence. Thus, literally construed, the clause in subsection 1, "except where the intent of such sale or lease is to avoid the objectives of the statute" does not apply to transfers to abutting landowners.

You express further concern about this point in your letter because the amendment states (somewhat ungrammatically) that "a lot shall not include a transfer * * * to an abutting landowner." (Underscoring supplied.) Further, the new amendment to subsection 5 (Section 2 of Chapter 700, P.L. 1973) provides that:

> "The owner of a lot which, at the time of its creation, was not part of a subdivision, shall not be required to secure the approval of the municipal reviewing authority for such lot in the event that the subsequent actions of a prior owner, or his successor in interest, of the lot creates a subdivis ion of which the lots is a part, however, the municipal reviewing authority shall consider the existence of such a previously created lot in passing upon the application of any prior owner, or his successor in interest, of the lot for approval of a proposed subdivision."

Considering these two amendments together, your concern is that the lot or lots transferred to an abutting landowner will be exempt from the law even if a subdivision is thus created by sequence of transfers from owner A to abutting owner B.

While the statute is not as clear as it ought to be, we believe that such a misuse of the law could be successfully challenged. Subsection 5 was amended solely to afford adequate title protection to a landowner when the prior owner subsequently creates a subdivision. An intentional avoidance of the law by transfers of lots to an abutting landowner would constitute a subterfuge. The courts ought to consider such conveyances dependent steps in an overall transaction designed to achieve a subdivision in violation of the law (the so-called "step transaction" doctrine).

The matter is not altogether free from doubt, however, and the statute ought to be amended to clarify it with regard to these matters, as well as several others. In particular, the assumption that we should look to "intent" in administering a statute is a dubious one because matters of intent or motive are difficult to prove as such. It would be preferable if the statute were rephrased in terms of the effect of certain conveyances resulting in evasion of the objectives or purposes of the law. We therefore suggest for your consideration the following changes:

1. Subsection 1 of § 4956 would be amended to read as follows:

> 1. Defined. A subdivision is the division of a tract or parcel of land into 3 or more lots within any 5-year period, whether accomplished by sale, lease, development, building or otherwise, except when the division is accomplished by inheritance, order of court or gift to a relative~~,-unless-the-intent-of-such-gift-is-to avoid-the-objectives-of-this-section.--For-the-purposes of-this-section,-a-lot-shall-not-include~~
>
> A transfer of interest in land to an abutting landowner~~,-however-accomplished,~~ shall not be considered part of a division of land for the purposes of this statute.

In determining whether a parcel of land is divided into 3 or more lots, land retained by the subdivider for his own use as a single family residence for a period of at least 5 years shall not be included.

No sale or lease of any lot or parcel shall be considered as being a part of a subdivision if such a lot or parcel is 40 acres or more in size.~~, except where the intent of such sale or lease is to avoid the objectives of this statute.~~

The grantee, including a lessee, or his successors in interest of a lot which at the time of its creation and transfer to such grantee is not part of a subdivision may, at his or their option, elect (1) to have the lot not considered a part of a subdivision, or (2) as against the grantor, including a lessor, or his successor in interest who engaged in the actions hereinafter described, rescind the transfer and recover the purchase price, with interest, together with damages and costs in addition to any other remedies provided by law, if, solely by reason of the subsequent actions of the grantor of such lot or his successor in interest with regard to nearby lands, a subdivision is created of which the lot is a part. Such lot, however, shall be deemed a part of such a subdivision for the purpose of considering an application of such grantor of such lot or his successor in interest for approval of such proposed subdivision or for the purpose of determining whether there has been a violation of this statute by such grantor or his successor in interest.

The exceptions to the definition of a division or subdivision provided in this section shall not apply to a gift to a relative, to a lot 40 acres or more in size, or to a transfer to an abutting landowner if, the effect of such transaction or transactions would result in avoiding the objectives of this statute.

The present amendment of subsection 5 provided by Chap. 700 of P.L. 1973, would, of course, be struck if the foregoing amendment were to be adopted.

Edward Lee Rogers

EDWARD LEE ROGERS
Assistant Attorney General

ELR/ec

**AN INFORMAL OPINION**

MEMORANDUM

October 31, 1973

TO: Office of the Attorney General

FROM: Fourtin Powell, Regional Planner, State Planning Office FP

SUBJECT: Memorandum by Office of the Attorney General and the Maine Municipal Association, 2 March 1972, concerning subdivisions.

---

The memorandum on subdivisions, dated 2 March 1972, would appear to be still valid despite the 1973 amendments to the definition of subdivision. The expansion of the definition to include ". . . sale, lease, development, building or otherwise . . ." as ways of creating a subdivision would seem to reinforce the position taken in the 1972 memorandum that subdivision includes more than the simple plotting and sale of land as occurs in a typical residential subdivision.

However, one point in that memorandum seems to be contrary to the reasoning which otherwise supports the view that most situations in which an interest in land is divided among three or more persons constitute a subdivision; the situation in regard to multiple unit housing in a single building.

The example of a shopping center in which all the buildings are connected and the premises leased to various tenants is seen as a subdivision, apparently under the assumption that "lots" are set aside for private use and occupancy. However, a high-rise condominium structure, in which the units would presumably be sold to individual buyers, is not considered a subdivision, even though a similar legal arrangement in a low-rise multiple-unit structure would be a subdivision.

What seems to be implied by this line of reasoning is that each buyer of a condominium unit in a low-rise building has a right to use and occupy a part of the land, even though he may simply own an undivided interest in the whole parcel, while the buyer of a condominium unit in a high-rise building has no such rights. Would a condominium with three or more units on the ground floor qualify as a subdivision?

The real distinction would appear to be not whether the land was divided into lots but that the interest in such land was shared by three or more persons who have a lease or own or rent some portion of the land or buildings thereon.

Since the law was intended to control unplanned growth and development, it would appear that it should permit municipal review of any type of development intending to create three or more "interests" in land, broadly defined. It can certainly be argued that municipalities would be well advised to have separate review standards for other than the typical, residential subdivision. However, to deny municipal review on the basis of building type, i.e., high-rise, does not seem logical.

Perhaps the Office of the Attorney General can update and revise the 1972 memorandums on subdivisions to clarify these points under the Public Laws of 1973.

# STATE OF MAINE

Inter-Departmental Memorandum Date January 2, 1974

To Fourtin Powell Dept. State Planning

From John M.R. Paterson JP Dept. Attorney General

Subject Municipal Subdivision Statute, 30 M.R.S.A. § 4956

Your memorandum of October 31, 1973 commenting on the above statute and the informal memorandum issued by this office in 1972 was forwarded to me. I apologize for not having responded earlier to your comments, but, as I am sure you can appreciate, we have had a number of urgent matters to which we have been required to respond. In any event, I appreciate your comments and suggestions.

In general, I agree with your remarks regarding the interpretation of the definition of the term "subdivision" as found in §4956. I don't believe it was the intent of our Advisory Memorandum to exclude high-rise condominiums from the definition of subdivision. I am sure you can appreciate, however, that the interpretation given to that statute by this office is a rather broad interpretation and there is, of course, no guarantee that we are right. Indeed, there is a substantial segment of the Bar in Maine that disagrees with the views of this office. We have considered your suggestion of updating and revising our 1972 Advisory Memorandum and I would anticipate that at some time in the future we will do just that. In the meantime, we have tried to establish a procedure for answering the numerous inquiries which are directed to this office regarding interpretation of that statute. We have nearly finalized an agreement with the Maine Municipal Association along the following lines. Any inquiry from a land owner or an attorney requesting an interpretation of the subdivision statute would first be referred to the local planning board. The purpose of this step is to insure that the local planning board is aware that a question exists regarding some development in their community and to insure that the answer which we render is based on all the facts, including those that the developer chooses to advise us of and those of which the planning board is aware but which would otherwise not come to our attention. In the event that the planning board is unable to answer the question from the developer or attorney, the planning board may refer that question to the Maine Municipal Association. This second step is taken out of recognition of the fact that the Maine Municipal Association provides legal assistance to all 495 communities in the State and that the Attorney General is not the attorney for each municipality in the State. In addition, the Attorney General's office and Maine Municipal Association have worked closely in the past in formulating interpretation to the subdivision statute and we think it is only sensible that they continue to play a significant role in the future. In the event that a question arises which the Maine Municipal Association deems significant enough to refer to our office, the MMA would direct the question to us for an answer. We would, in turn, answer the question for the Maine Municipal Association. Once the details of this arrangement have been finalized it is our intention to advise all the municipalities of this agreement and the State and County Bar Associations. In addition, we would hope that the Maine Municipal

Association would keep all municipalities in the State aware of the interpretation issued in regard to the subdivision statute.

While this may seem like a rather cumbersome structure, it has the advantage of replacing what has, to date, been no system at all and has resulted in substantial state-wide confusion regarding interpretation of the subdivision statute and how a citizen goes about obtaining an answer to his question. Using the system outlined above, all parties conceivably interested in a particular question will be advised of the State's position.

I hope this answers your memorandum of the 31st. We would certainly appreciate receiving any other suggestions which you might have regarding this problem.

Thanks again for your interest.

TO: ALL CONCERNED MUNICIPALITIES
FROM: ATTORNEY GENERAL'S DEPARTMENT AND THE MAINE MUNICIPAL ASSOCIATION
RE: SUBDIVISION STATUTE - TITLE 30 MAINE REVISED STATUTES, SECTION 4956 AS ENACTED BY CHAPTER 454 OF THE PUBLIC LAWS OF 1971

## I. INTRODUCTION

Since the passage of the above act, both the Attorney General and the Maine Municipal Association have had numerous requests for guidance in the interpretation of the above law. Municipal officers and planning boards have requested official "Opinions" of the Attorney General regarding numerour provisions of the statute.

The Law prohibits the Attorney General from rendering opinions for other than State agencies or officials on matters dealing with State Law (as opposed to municipal ordinances or the legal relationships between private parties). In this case, however, it was decided that this unique statute required an advisory memorandum from the Attorney General. Though the cited statute is administered by municipalities, it may, according to its own terms, be enforced by the Attorney General. There is, therefore, a substantial connection with a State agency which would support an advisory memorandum. Moreover, because of the nature of the act, both the Attorney General and the Maine Municipal Association believe it is desirable to establish some uniform guidelines for the interpretation of the subdivision Law. Developers and municipal officers have an interest in uniform enforcement. If the Attorney General is to enforce the law, it is obvious that he must establish guidelines for his own use. Therefore, the Attorney General has determined that it is in the public interest to issue this memorandum. It must be emphasized that this memorandum is not an "Opinion" in the traditional sense, but rather only an informal interpretation of the referenced law. This has been prepared by the Department of the Attorney General after extensive consultation and discussion with the Maine Municipal Association. We strongly advise all planning boards and municipalities to consult their own counsel on any issue discussed herein or which may otherwise arise

## II. SUBDIVISION

The most frequently asked category of questions usually requests further interpretation of the definition of "subdivision". It is obvious that an infinite variety of situations may arise under this law. It would be impossible to deal

with every conceivable fact situation. Therefore, in further defining "subdivision" we have attempted to establish a conceptual framework and to apply such framework to a variety of fact situations.

The term "subdivision", as contained in the statute, is defined as:

> "The division of a tract or parcel of land into 3 or more lots for the purpose of sale, development or building."

Based on this definition, it is apparent that there are two elements to the definition: (1) The division of land, and (2) the purpose for which the division occurs. Of these two elements, the first is probably the more important and also more complicated. If we determine that there has been a division of land, it is a relatively simple matter to identify the purpose for which the division takes place (e.g., plainly a shopping center constitutes a "development." Query whether it is a division of land.)

It is also important to keep in mind the public policy implicit in this statute and the harm which it was designed to prevent. This statute enables municipalities to protect themselves against unplanned growth. The twelve criteria in § 4956(3) set forth the specific items with which the Legislature and municipalities were concerned. It should be apparent that these questions can be applied to a variety of developments, and are not just limited to residential subdivisions.

As we have noted above, the critical question is to determine whether in each case there has been a "division" of land into "lots". The term "lot" may be defined in two ways: either (1) according to its legal characteristics (e.g., a parcel of land identified on a plat or set out by metes and bounds), or (2) according to its character and function (e.g., a piece of land measured and set apart for private use and occupancy). See Words and Phrases and Black's Law Dictionary for further examples of "lot". Of the two definitions, the latter is the more helpful since it describes a more functional approach; that is, it is concerned not with legal form but rather with actual use. It is this functional approach which we have chosen to utilize in interpreting "subdivision", since we believe it is consistent with the purpose of the law. Having thus attempted to establish the conceptual framework of our analysis, it is now necessary to apply it to a few hypothetical fact situations.

The subdivision of land is usually accomplished by marking such divisions on a plat, a plan or by simply conveying the parcels. Clearly an outright sale of a portion of a parcel of land is a division. However, a "division" under this act may also be accomplished by other than selling lots. If the language of the statute only permitted division to be achieved by sale, then clearly dividing a parcel by leasing lots would not be a "division" as envisioned by the act. But the statute speaks of division for the purpose of sale and also for "development or building". Such development or building could occur without a sale of lots. Note also the language in § 4956(4) which prohibits "conveyances". A conveyance is a transfer of an estate or interest in real property, including a sale, gift, lease or mortgage. We conclude, therefore, that a division may occur when an interest in land is sold, leased or otherwise conveyed.

It is also conceivable that developments other than residential ones may be "subdivisions". Though the conclusion in any case depends on the particular facts, it is our opinion that cluster housing, shopping centers, mobile home parks, and apartment, condominium or cooperative housing with multiple building units may be deemed "subdivisions". The test again is the actual substance and not the legal form of the "development". It is obvious that if a developer built commercial units on adjacent parcels of land, and sold such units, there would be a subdivision. A different legal situation but similar practical effect is created when a developer connects the units (e.g., a shopping center). If the buildings are connected and the premises merely leased, we again have a situation which is similar in substance to the first example. The only real difference in each case is the legal relationship between the developer and the tenants of the units. We conclude that using our functional definition of "lots" (parcels of land identified and set aside for private use and occupancy) and keeping in mind the harm to be regulated, there is a subdivision. This same analysis may also be applied to various kinds of housing developments. Multiple unit housing would be a subdivision, but a highrise apartment, condominium or similar housing structure probably would not since there is no division of the land in the manner discussed above.

In general, we believe the above method of analysis can be applied to most situations. Though the list of examples is not exhaustive, it should aid municipalities and developers in determining the applicability of the law to a particular case.

## III. RETROACTIVE APPLICATION

The second category of questions concerns the retroactive effect of the law and its application to divisions which occurred before the effective date of the law. The prohibition language of the statute refers to sales or conveyances. Clearly such prohibition could not be retroactive in effect since that would make sales in unapproved subdivisions, whenever made, illegal. Such a result would be extremely onerous and would be in effect making illegal those transactions which were at the time legal. Retroactive application of statutes is generally not approved. Furthermore, such an interpretation would make the statute apply ex post facto and such application is clearly prohibited. See 82 C.J.S., Statutes, § § 412-419. Sales or conveyances which occurred prior to the enactment of this law and which were in compliance with existing statutes are thus not affected by the passage of this act. The law applies only to sales occurring since its effective date. However, sales of lots after the effective date of this act, whether in a subdivision which was approved under prior law or not, are subject to this act. If the lots have not been sold and they are within a subdivision, those remaining unsold lots are subject to municipal approval. As a practical matter, this may mean that municipalities will give rather cursory review to a previously approved subdivision. Nevertheless, such review is required.

## IV. APPEAL AND ENFORCEMENT

Finally, there have been questions as to appeal procedure and enforcement. Though the statute is silent on the right to appeal, such appeals may be taken pursuant to Rule 80B, Maine Rules of Civil Procedure. Enforcement will be the responsibility of the municipality. It would be an onerous burden on the Attorney General and a virtual impossibility to enforce the law on behalf of every city and town in the entire State. Municipalities have the power to enforce the law and the responsibility must rest with them. If they lack sufficient interest to do so, it seems inconsistent that they should demand action from the State. The Attorney General will act to enforce the law only under extraordinary circumstances, and then, when possible, in conjunction with the municipality.

Casual sales by landowners, that is, selling of a lot or two every few years as opposed to planned and conscious development, is likely to be a major enforcement problem. Such persons are likely to be ignorant of the law or use such casual sales as a means of side-stepping the requirement of municipal review. Municipalities thus may wish to establish a procedure to be used in cases where they have

discovered a landowner who has or is about to come within the purview of the law. Such a procedure could include a notice to the landowner of the alleged violation and an opportunity for a hearing to determine whether the landowner is or has created a subdivision. The results of such hearing would then provide the basis for further legal proceedings by the planning board or municipal officers.

## V. GENERAL

Questions regarding the form and substance of proposed municipal regulations and procedure should be referred to local counsel. Guidance is also available from the Maine Municipal Association.

# APPENDIX 4

Suggested Forms for the Administration of
The Municipal Subdivision Law
Title 30, M.R.S.A., Section 4956

The enclosed forms are designed for municipal use in the review of subdivisions at the local level. While the first form is designed for towns that do not have a subdivision ordinance or set of planning board regulations, the remaining forms can be used by all municipalities.

The forms were designed to meet Statutory requirements for municipal administration of the Subdivision Law, and to make the review process easier and clearer for both the municipality and the subdivider. However, it is not intended that all of the forms be used every time a subdivision is reviewed. To the contrary, local officials will probably find that only a few of the forms are needed for most reviews.

Note to Municipal Reviewing Authority: The Subdivision Law (Title 30, M.R.S.A. Section 4956) now requires certain notifications to be made in writing, including:

1) the issuance of a receipt when a subdivision application is submitted (see form B);

2) within 30 days from the date of the receipt, notification that the application is complete, or, if it is not complete, notification of the specific additional material needed to make a complete application (see forms F and C, respectively); and

3) within 60 days of having received a completed application, the issuance of a decision approving, approving with conditions, or denying the proposed subdivision with findings of fact that the proposed subdivision does or does not meet the criteria in the law (see form H).

The Subdivision Law also stipulates that the mandatory review period may be extended by mutual agreement. This should be done in writing (see form I).

A portion of the Public Right to Know Law (Title 1, Section 404-A) requires that the Planning Board keep a written record of its decision on every application (see form J).

STATE PLANNING OFFICE
February, 1976

The preparation of this document was financially aided by a special comprehensive planning grant from the U.S. Department of Housing and Urban Development.

The following agencies provided review assistance in the development of these forms: The Southern Mid Coast Regional Planning Commission, The Maine Municipal Association, The Penobscot Valley Regional Planning Commission, The North Kennebec Regional Planning Commission, and the Southern Kennebec Valley Regional Planning Commission.

Form A

Application Form for

Subdivision Approval

Note to Applicant:

Your application for subdivision approval will not be considered complete until a Final Plat Plan, based on a survey, has been submitted to the Planning Board. You are advised to meet with the Planning Board prior to completing this application form, as it may not be necessary to comply with all of the items shown on the form. Following the submission of a sketch plan of your subdivision, the Planning Board will indicate, by a check mark in the left hand column of this form, the items which must be completed (items which are already checked must be completed for all subdivisions). The review of your subdivision should consist of 3 steps, as outlined below.

1. Submission of a sketch plan. The sketch plan shall consist of a rough outline of the proposed subdivision, and may be a free-hand, pencilled sketch of the parcel, showing the proposed layout of streets, lots, and other features which may be of assistance to the Planning Board in making its determinations. In order for the Planning Board to be more fully informed about the site, the subdivider shall arrange a joint inspection of the site with the Planning Board, or an individual appointed by the Chairman to act as the Board's representative for the inspection. The on-site inspection may be conducted at or shortly after the submission of the sketch plan, but this phase of the application process will not be considered complete until such inspection has been made.

2. Submission of a Preliminary Plat Plan. Upon submission of a sketch plan, and following an on-site inspection of the site, the Planning Board will outline, by checking specific items on this application, the specific requirements for preliminary plat submission. Specific requirements will vary according to the size and complexity of the subdivision proposal. In some instances, the Planning Board may waive the requirement for a preliminary plat plan submittal, in which case this application form must be submitted with the final plat plan.

3. Submission of a Final Plat Plan. After any apparent deficiencies in the preliminary plat plan have been corrected, a final plat plan must be submitted to the Planning Board. Your application for subdivision approval will not be considered complete until the final Plat plan has been submitted.

Information on the Applicant.

X 1. Name of Owner _____

X 2. Name of Applicant (if other than owner) _____

X 3. If Applicant is a corporation, state whether the corporation is licensed to do business in Maine (Yes or No) _____, and attach a copy of Secretary of State's Registration.

X 4. Name of Applicant's authorized representative _____

X 5. Name, address, and number of Registered Professional Engineer, Land Surveyor, or Planner _____

_____

X 6. Address to which all correspondence from the Planning Board should be sent:

_____

_____

X 7. What interest does Applicant have in the parcel to be subdivided (option, land purchase contract, record ownership, etc.?)_____

_____

Attach documentation of this interest.

X 8. What interest does applicant have in any property abutting parcel to be subdivided?

_____

X 9. State whether preliminary plat plan covers entire, contiguous holdings of applicant or not. (Yes or No)._____

Information on Parcel to be Subdivided

X 1. Location of property: Book_____page_____(from Register of Deeds).

X 2. Location of property: Map_____lot_____(from Assessor's Office).

___ 3. Map survey of tract to be subdivided, certified by a Registered Land Surveyor, tied to established reference points (attach to application).

X 4. Current zoning of property_____

X 5. Acreage of parcel to be subdivided_____

___ 6. A soils report, identifying soil types and location of soil test areas. Based on soil test results, certain modifications of preliminary plat plan may be required (attach copy of soils report to application). There shall be at least one soil test per lot.

X 7. Names of property owners abutting parcel to be subdivided, and on opposite side of any road from parcel to be subdivided (show on Plat).

___ 8. Indicate the nature of any restrictive covenants to be placed on the deeds._____

_____

Information on Subdivision

X 1. Proposed name of subdivision_____

X 2. Number of lots_____

X 3. Date, north point, graphic map scale (show on plat).

X 4. Proposed lot lines with approximate dimensions and suggested locations of buildings, subsurface sewage disposal systems, and wells (show on plat).

X 5. Location of temporary markers adequately located to enable the Planning Board to locate lots readily and appraise basic lot layout in the field (show on plat).

___ 6. Location of all parcels to be dedicated to public use, the conditions of such dedication, and the location of all natural features or site elements to be preserved (show on plat).

___ 7. A location map, drawn at a scale of not over 400 feet to the inch, showing the relation of the proposed subdivision to adjacent properties and to the general surrounding area. The location map shall show all the area within 2000 feet of any property line of the proposed subdivision (attach to application).

___ 8. Location and size of existing buildings, watercourses, and other essential existing physical features (show on plat).

___ 9. Location and size of any existing sewers and water mains, and culverts and drains.

___ 10. Location, names, and widths of existing and proposed streets, highways, easements, building lines, parks, and other open spaces (show on plat).

___ 11. Contour lines at an interval of not more than (5, 10, 20) feet in elevation, to refer to U.S.C. and G.S. benchmarks if within 500 feet of the subdivision.

___ 12. Typical cross-sections of proposed grading for roadways, sidewalks, and storm drainage facilities (attach to application).

___ 13. A soil erosion and sedimentation control plan (attach to application).

___ 14. (If requirement for Preliminary Plat Plan has been waived, Final Plat Plan must comply with requirements of Form E).

___ 15. Other _____

_____

_____

Note to Applicant: Complete this form, and return it with the required documents and 3 drawings of the preliminary plat.

To the best of my knowledge, all information submitted on this Application is true and correct.

Signed _____ Applicant

Date: _____

Form B

Receipt for Subdivision Application

_____ Planning Board

TO: Applicant _____

Mailing Address _____

Date _____

In accordance with Title 30 M.R.S.A. Section 4956, the Planning Board has received your application for subdivision approval. The Planning Board shall, within 30 days of the date of this receipt, notify you in writing either that the application is a complete application or, if the application is incomplete, the Planning Board will notify you of the specific additional material needed to make a complete application.

Signed _____ Chairman

_____

Form C

Request for Additional Information

_____ Planning Board

TO: Applicant _____

Address _____

Date _____

Your application for subdivision approval is incomplete, and cannot receive further consideration from the Planning Board without the following information:

_____

_____

_____

_____

_____

_____

_____

Signed _____ Chairman

Form D

Notice of Decision on
Preliminary Plat Plan

_____ Planning Board

TO: Applicant _____

Mailing Address _____

Date _____

This is to advise you that:

____ The Planning Board has reviewed your application for subdivision approval, including the preliminary plat plan, and has determined that, upon receipt of a final plat plan, with all attachments as indicated on Form E, your application for subdivision approval will be considered complete.

____ The Planning Board has reviewed your application for subdivision approval, including the preliminary plat plan, and has determined that there are a number of apparent deficiencies with the proposal which should be corrected before submission of the final plat plan. These apparent deficiencies include:

_____

_____

_____

_____

_____

After these deficiencies have been corrected, the application and preliminary plat plan should be resubmitted to the Planning Board for their consideration.

Signed _____, Chairman

Form E

Notification of Requirements for
Final Plat Plan

_____ Planning Board

TO: Applicant _____

Mailing Address _____

Date _____

You are hereby advised that the final plat plan shall consist of 1 original and 3 copies of one or more maps or drawings similar to the maps or drawings prepared for preliminary plat submission, except that space shall be reserved on the plat plan for the endorsement of all appropriate agencies, and for the attachment of specific conditions of approval. In addition, the following items, where checked, will be needed in order for the application to be considered complete (items marked "N.A." indicate that these items have already been received, or are not needed.

_____ 1. Registered Land Surveyor. The name, registration number, and seal of the registered land surveyor who prepared the final plat (show on plat).

_____ 2. Streets. The names and lines, lengths of all straight lines, the deflection of angles, radii, length of curves, and central angles of all curves, and tangent distances and bearings (show on plat).

_____ 3. Open spaces. The designation of all easements, areas reserved for or dedicated to, public use, and areas reserved by the subdivider.

_____ 4. Lots. The location, bearing, and length of every line, with all lots to be numbered in accordance with local practices.

_____ 5. Permanent Reference Monuments. The location of permanent markers set at all lot corners, as shown on the plat.

_____ 6. Performance Bond. A performance bond to secure completion of all public improvements required by the Planning Board, and written evidence that the municipal officers are satisfied with the legal sufficiency of such bond.

_____ 7. Land Dedication. Written copies of any documents of land dedication, and written evidence that the municipal officers are satisfied with the legal sufficiency of any documents conveying such land dedication.

_____ 8. Other. _____

_____

_____

_____

Signed _____ Chairman

Form F

(To be sent after submission of Final Plat Plan and all other information as requested.)

## Notification of Completed Subdivision Application

_____ Planning Board

TO: Applicant _____

Mailing Address _____

Date _____

In accordance with Title 30, M.R.S.A., Section 4956, the Planning Board has determined that your application for subdivision approval is complete. You are hereby advised that:

1. _____ A public hearing will be held within 30 days of this notification, as permitted by Statute, as follows:

   Date of Public Hearing _____

   Time _____

   Place _____

   _____ A public hearing will not be held on this application.

2. Unless another time limit is mutually agreed to, the Planning Board will approve or deny your application, or approve it with such conditions as are necessary to satisfy the criteria contained in Title 30, M.R.S.A., Section 4956, as follows:

   _____ Such action will be taken within 30 days of the public hearing;

   _____ (if no public hearing) Such action will be taken within 60 days of this notification.

3. The Planning Board will notify you of their action within 7 days of the decision.

Signed _____ Chairman

Form G

Notice of Public Hearing

_____ Planning Board

The Planning Board will hold a public hearing on an application for subdivision approval as requested by

_____

Date of Public Hearing _____

Time _____

Place _____

The proposed subdivision would consist of approximately _____ lots, and would be located approximately as follows:

Signed. _____ Chairman

---

(for newspaper use only)

Publish the above notice on the following dates: _____

_____

_____

and charge to: _____

_____

Form H

Notice of Decision on Final Plat Plan

_____ Planning Board

TO: Applicant _____

Mailing Address _____

Date _____

This is to advise you that:

____ The Planning Board finds that your proposed subdivision meets all of the criteria contained in the Subdivision Law. Accordingly, the Planning Board has approved your final plat plan and (has signed, will sign) the final plat plan, subject to the following conditions which (are indicated, must be indicated) on the plat.

_____

_____

_____

____ The Planning Board has denied your application for subdivision approval for the following reasons:

____ 1. The Planning Board finds that your proposed subdivision does not meet all of the criteria contained in the Subdivision Law, specifically;

_____

_____

_____

____ 2. Your subdivision application does not meet all of the requirements of the Town's (subdivision ordinance, subdivision regulations), specifically _____

_____

_____

____ 3. Other _____

_____

_____

Signed _____ Chairman

Form I

Town of _____

Agreement to Extend Subdivision Review Period

WHEREAS The Municipal Subdivision Law, Title 30 M.R.S.A. Section 4956 requires that the municipal reviewing authority approve, approve with conditions, or deny a completed application for subdivision review within 60 days of having received it, or within 30 days of a public hearing if one is held (such public hearing to be held within 30 days of having received a complete application); and

WHEREAS the complete subdivision application submitted by the undersigned subdivider cannot be adequately reviewed in the specified time period because of extenuating circumstances, and would therefore have to be denied and resubmitted; and

WHEREAS it would be mutually advantageous to the undersigned parties to extend the review period; and

WHEREAS Title 30 M.R.S.A. Section 4956 stipulates that the time period within which a subdivision application must be reviewed may be extended by mutual agreement;

NOW THEREFORE the undersigned parties mutually agree that:

1. The subdivision review period shall be extended to: _____.

2. A decision on the subdivision shall be rendered by that date, unless the review period is again extended by mutual agreement.

Signed _____ Chairman

_____ Subdivider

Date _____

Form J

## Planning Board Record of Application for Subdivision Approval

_____ Planning Board

Applicant _____

Mailing Address _____

Subdivision Name and Number _____

| Date | Activity |
|---|---|
| _____ | sketch plan submitted |
| _____ | inspection of parcel to be subdivided |
| _____ | application for subdivision approval submitted |
| _____ | receipt issued |
| _____ | applicant notified that additional materials are needed |
| _____ | applicant notified of decision on preliminary plat plan |
| _____ | applicant notified of requirements for final plat plan |
| _____ | applicant notified that subdivision application is complete |
| _____ | notice of public hearing (posted, published, sent) |
| _____ | public hearing held |
| _____ | final plat plan approved |
| _____ | final plat plan denied |
| _____ | conditions of final plat plan approval _____ |

_____

_____

_____

# APPENDIX 5

# THE PLAT PLAN

A good portion of the information needed for the Planning Board to review a subdivision proposal can be contained on a survey plan or "plat plan" submitted by the subdivider. This plat plan is, in effect, a picture of the proposed subdivision which indicates certain types of information. This plan is required by the State Subdivision Law as evidenced below:

> "4. Enforcement. No person, firm, corporation or other legal entity may sell, lease or convey for consideration any land in a subdivision unless the subdivision has been approved by the municipal reviewing authority of the municipality where the subdivision is located, and unless a survey plan thereof showing permanent markers set at all lot corners has been recorded in the proper registry of deeds. The term "permanent marker" includes but is not limited to the following: A granite monument, a concrete monument, an iron pin or a drill hole in ledge. No subdivision plat or plan shall be recorded by an register of deeds which has not been approved as required. Approval for the purpose of recording shall appear in writing on the plat or plan. No public utility, water district, sanitary district or any utility company of any kind shall install services to any lot in a subdivision for which a plan has not been approved."

In addition to the requirements of the State law, individual counties have varying standards that must be met in order to have the plat plan filed with the registry of deeds. As an example, the Piscataquis County standards are listed below:

Piscataquis County Standards for Future Acceptance of Recorded Plans.

1. Permanent file copy to be on Matte Surface Polyester Translucent Film.

2. Plan image must be permanent non-fading india ink, photographic or "moist Diazo" non erasable.

3. Surveyors seal and signature plus all approval signatures to be placed directly on polyester film recorded copy in permanent black or red ink. (Note: blue ink is non-reproducible).

4. Plans should be a maximum size of 24" x 36" including 1" margin at mounting edge (preferrably 24" end). Minimum plan size should not be less than 12" x 18".

5. All plans should include a divided pictorial bar scale in place of or addition to present descriptive scale: (1" = 200').

6. Survey areas too large to be contained on one (1) 24" x 36" plan should have a master reduced size index plan showing areas covered by individual detailed plan sheets.

7. Each individual detailed plan covered by master index plan should contain the following information.

    a. plan title
    b. sheet number (sheet _____of _____sheets)
    c. surveyors seal and signature
    d. bar scale
    e. match line data for adjoining sheet or sheets.

A check with the Penobscot County Register of Deeds indicated that they have no written standards as such, but generally agree with the Piscataquis County requirements. Since they are not standardized statewide, it is a good idea to check with the registry of deeds in your county to determine their requirements.

To save time and unnecessary expense to the subdivider, Planning Boards should be guided by these requirements when requesting a plat plan. Many first-time subdividers are totally ignorant of the subdivision review procedure in general and would probably welcome written instructions regarding what information is requested of them, including plat plan specifications.

For the types of information that can be contained on a plat plan, see Appendix 4, form A.

# APPENDIX 6

## ADOPTING LOCAL SUBDIVISION REGULATIONS

The State Subdivision Law indicates that towns may adopt their own subdivision regulations when it states, "The municipal reviewing authority may, after a public hearing, adopt additional reasonable regulations governing subdivisions which shall control until amended, repealed or replaced by regulations adopted by the municipal legislative body."

This action is unique in so far as it is the only regulation that can be adopted by the Planning Board without the approval of the local legislative body. After adoption by a majority of the Planning Board members, these subdivision regulations have the full force of law, just as much as any ordinance enacted by the legislative body.

There are, however, some restrictions inherent in the adoption of a local subdivision regulation.

1. The regulations cannot be <u>less</u> restrictive than the State Law. The eleven State Subdivision Law review criteria must still be applied to local reviews as well as the other provisions of the law.

2. They must be "reasonable". This would indicate that where local subdivision regulations are <u>more</u> restrictive than the State Law, they should not be oppressively so.

   EXAMPLE: Charging a $500.00 filing fee for the express or implied purpose of discouraging subdivisions.

This gray area of "reasonableness" is best left to lawyers and the courts. We won't attempt to define it further in this publication.

There are a multitude of model subdivision regulations from which to choose ranging from two or three pages up to book size. Most are available through regional planning commissions along with advice on the subject from professional planners.

# AN OUTLINE OF THE PURPOSE AND TYPICAL CONTENTS of MUNICIPAL SUBDIVISION REGULATIONS

*This paper was prepared by the Penobscot Valley Regional Planning Commission and paid for by the Lincoln Planning Board*

Maine State Law (Title 30 MRSA, Sec. 4956 - Land Subdivision specifically allows municipal Planning Boards to adopt regulations (in addition to state requirements) governing subdivision of land. Such regulations may be adopted only after a public hearing and may be amended, repealed or replaced by the municipal legislative body (Town Meeting).

Municipal subdivision regulations are usually adopted for one or more of the following reasons:

1. To impose more restrictive regulations than those of the State Law (see Attorney General opinion attached);

2. To establish administrative procedures by which subdivisions will be reviewed;

3. To establish specific design and construction standards for subdivisions.

Most municipal subdivision regulations include the following general topics:

1. Statement of purpose and authority

   Authority is derived from the State Law cited above. The statement of purpose usually centers around the phrase "to protect the safety, health, and general welfare"; however, this is sometimes clarified by adding the specific points contained in the "Guidelines" of State Law (T.30, MRSA, Sec. 4956, Par. 3)

2. Definitions - of frequently used, complex terms used in the ordinance.

3. Specifications of Plans required for review

   This section details the size, type of material, number of copies and type of data to be shown on various plans, as well as additional data required for reviewing the proposed subdivision.

Typical types of plans required

a. Sketch Plan - an informal, very preliminary plan (usually drawn in pencil) to give the Board some knowledge of the land being proposed for subdivision and the initial design ideas of the subdivider.

b. Preliminary Plan - an engineering and design plan based on the Sketch Plan, usually drawn by a professional. It is the formal working plan that is reviewed by the Planning Board in order to determine if the subdivision will meet all requirements of the ordinance.

c. Final Plan - a revision of the Preliminary Plan, incorporating changes required by the Planning Board. It represents the subdivision as it will appear when built, and it is the official plan filed in the County Registry of Deeds.

Types of data usually required on Preliminary and Final Plans.

a. Name of subdivision, names of owner, subdivider, designer, engineer, adjacent owners, etc.

b. acreage of the parcel and proposed lots.

c. Location of (both existing and proposed) property lines, easements, buildings and natural features, sewers, water mains, culverts, drains, parks and open space, etc.

d. Locations and widths of existing and proposed streets and cross sections of proposed streets.

e. Contours

f. Soils types

g. Date and scale of plan, north arrow, etc.

h. Survey of the tract boundary, made by a registered land surveyor.

i. Engineering data on streets, drains and other improvements.

NOTE: Some ordinances may contain additional data either on or accompanying a plan; however, the above list is the most common data required and should be considered as a minimum for adequate review.

4. Administrative Review Procedures

This section lists in a step-by-step manner the procedure by which various required plans are to be submitted (by the subdivider) and reviewed (by the Planning Board). These provisions are sometimes contained in the section that lists specification of various plans (see 3 above). Also contained here are such administrative details as fees for review, time limitations for review and filing, provisions for public hearings, and provisions for performance bonding.

5. General Requirements

This section lists general requirements with which the subdivider must comply. These usually include such things as:

a. Conformance with comprehensive plan and other ordinances.

b. Assessment of effect of subdivision on community services, natural features, etc.

c. Requirements for reservation of recreation land, open land, easements, etc.

6. Design Standards

This section lists specific requirements for physical improvements and specifications therefor. Most of these standards involve engineering considerations and are of a technical design nature, in contrast to the "General Requirements" of #5 above. Customarily included are standards for such things as:

a. Survey monuments, street signs

b. Street layout and construction

c. Sidewalks

d. Water supply, sewage disposal, surface drainage

e. Landscaping

f. Street lighting

7. Legal Provisions

The following items are usually covered in separate sections:

a. Enforcement provisions

b. Variance provisions

c. Appeal provisions

d. Separability provisions